FORM NLRB-4477
(4-96)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

APCOA/STANDARD PARKING, INC.[1/] Employer and TWILLA J. GREEN, An Individual Petitioner AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, MICHIGAN COUNCIL 25, AFL-CIO Union	CASE 7-RD-3366

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(*c*) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(*b*) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, [2/] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3/]

3. The labor organization(*s*) involved claim(*s*) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(*c*)(*1*) and Sections 2(*6*) and (*7*) of the Act.[4/]

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(*b*) of the Act: [5/]

> All full-time and regular part-time cashiers and shuttle bus drivers employed by the Employer at its facility located at G3090 West Bristol Road, Flint, Michigan; but excluding all office clerical employees, confidential employees, sales employees, managerial employees, and guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(*s*) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(*s*) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period
because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, MICHIGAN COUNCIL 25, AFL-CIO

LIST OF VOTERS*

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***N.L.R.B. v. Wyman-Gordon Company***, 394 U.S. 759 (1969); ***North Macon Health Care Facility***, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within **7** days of the date of this Decision **3** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **January 17, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **January 24, 2003.**

Dated January 10, 2003

at Detroit, Michigan

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director, Region Seven

Section 103.20 of the Board's Rules concerns the posting of election notices. Your attention is directed to the attached copy of that Section.

*If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.

1/ The name of the Employer appears as corrected at the hearing.

2/ The parties waived the filing of briefs.

3/ The Employer operates a public parking lot located at Flint Bishop Airport in Flint, Michigan.

4/ The Employer and Union contend that the instant petition is barred by a collective bargaining agreement that was agreed to by the parties on August 21, 2002, and ratified by unit employees on September 10th. On the same day, the Union notified the Employer's bargaining representative of the acceptance of the contract by the employees, and the Employer's representative informed the Union that he would take the contract to the board of directors for approval, which was accomplished in late September or early October. The final proposals as agreed to by they parties were initialed and dated by the Employer, mostly on October 16. However, the Union's bargaining representative did not initial all of the final proposals, although he did place dates on some of the final proposals on the dates they were agreed to by the Union. Thus, for example, the preface proposal of the contract bears a date in the handwriting of the Union's representative of December 3, 200l, and the word "OK." Other proposals are unmarked by the Union's representative, and still a few others do bear the initials the Union's representative with the date of November 6, 2002, which is well after the date the parties supposedly reached agreement. The Union was responsible for drafting the final contract for signature by the parties, which the parties concede, was never done because of the filing of the instant decertification petition on December 10.

The final proposals contain at Article 47 a handwritten provision entitled "Effective Date," which states: "This agreement constitutes the entire collection of negotiated articles on all subjects. This agreement shall become effective this day of and shall remain in effect until August 31, 2004." Although the beginning date for the contract was never filled in by the parties, the Employer contends the parties had agreed that the effective date of the contract would be September 1, 2002, as evidenced by the Employer's October implementation of the terms of a pay increase retroactively to September 1st as provided by Article 42 of the contract. However, the agreement at Article 4(b) also contains a union security clause which states: "Employees covered by this Agreement who are not members of the Union at the time it becomes effective shall be required as a condition of continued employment to become members of the Union or pay a representation fee equal to dues and initiation fees required for membership commencing (30) days after the effective date of this Agreement, and such condition shall be required for the duration of this Agreement."

The contract bar arguments by the Employer and Union fail for two reasons. First, the parties never signed the contract. Unless a contract signed by all the parties precedes a petition, it does not bar an election even though the parties consider it properly concluded and have put into effect some or all of its provisions. ***DePaul Adult Care Communities***, 325 NLRB 681 (1998). This does not mean that the contract must be a formal document or that it cannot consist of an exchange of a written proposal and a written acceptance. ***Georgia Purchasing***, 230 NLRB 1174 (1977). It does mean that in such instances the informal documents that are exchanged must be signed by all the parties in order to serve as a bar to an election, which is missing in the instant case.

Second, as the contract on its face is retroactively effective, and the grace period of the union security clause is geared to that effective date, the contract fails to accord nonmember incumbent employees the required 30-day statutory grace period following the date of its execution. The Board has found that such contracts cannot serve as a bar. ***Standard Molding Corp.***, 137 NLRB 1515, 1516 (1962).

5/ Currently, there are approximately 23 unit employees.

Classifications

347-4020-3300
347-4040-6725